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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,877	04/15/2004	Frank Wehrheim	7535-662US (RWP 1010 US)	7305
570 7590 01/23/2008 PANITCH SCHWARZE BELISARIO & NADEL LLP ONE COMMERCE SQUARE 2005 MARKET STREET, SUITE 2200 PHILADELPHIA, PA 19103			EXAMINER DWIVEDI, VIKANSHA S	
			ART UNIT 3746	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Notice of Non-Compliant Amendment (37 CFR 1.121)

Application No.

10/824,877

Examiner

Vikansha S. Dwivedi

Applicant(s)

WEHRHEIM, FRANK

Art Unit

3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 01 November 2007 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☐ C. Other \_\_\_\_\_.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☐ C. Other \_\_\_\_\_.
- ☐ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☐ E. Other: \_\_\_\_\_.
- ☒ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):  
See Continuation Sheet

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

## TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

**Extensions of time** are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable

Telephone No.

Continuation of 5 Other: Response to the election of species requirement: The applicant was required to elect between embodiments of figure 2 and 3.

Figure 2 is a protective cage according to one embodiment of the invention.

Figure 3 is a protective cage according to a second embodiment of the invention

The species are independent or distinct because the continuous gap 18 opens to a hole 24 and to the outside, runs between the rear ring 16 and the protective ring 12, the opening of gap 18 to the outside extends into the tubing insertion location 22 whereas the second embodiment the front side of cage 10 is completely closed and the pump wheel 6 is completely covered by the front side of cage 10.

Applicant admits in the response that Claim 1 specifies "a stationary protective ring (12) surrounding the entire circumference of the pump wheel (6) at the front side of the wheel." There is a protective cover present in claim 4 as seen in figure 3 which is a different embodiment of the invention. As the applicant denoted the protective ring is also present in the embodiment of Fig. 3, which is covered by claim 4. Applicant further points the difference between the embodiments of the two figures "The only difference is that the embodiment of Fig. 3 additionally comprises a front plate which covers the front side of the pump wheel (6), as defined in claim 4". Applicant's statement "Since claim 4 is dependent on claim 1, claim 1 covers the embodiment of Fig. 3, as well as Figs. 1 and 2" is non-responsive because claim 4 is still directed to embodiment of figure 3 and because claim 4 depends from claim 1 does not make claim 1 cover embodiments 1 and 2 (figure 3).

Applicant's statement that "In the event that the Examiner maintains the species election, Applicant provisionally elects the embodiment of Fig. 2 (also shown in Fig. 1). Applicant submits that all of the claims read on the embodiment of Figs. 1 and 2, although claim 4 also reads on the embodiment of Fig. 3" is non-responsive as it contradicts itself. To further clarify, applicant elects embodiment 1 (figure 2), admits that claim 4 refers to second embodiment (figure 3) and still submits that all the claims read on first embodiment.



Vikansha Dwivedi